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CHURCH OF SCIENTOLOGY
9 INTERNATIONAL

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HUB LAW OFFICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12

13 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
INTERNATIONAL, a California not-)
14 for-profit religious corporation,) [CONSOLIDATED]
15)
16 Plaintiff,) CHURCH OF SCIENTOLOGY
INTERNATIONAL'S MEMORANDUM
17 vs.) OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR
18) RETURN OF MONEY DEPOSITED
WITH THE COURT
19) [C.C.P. §§ 529(a); 995.360;
995.710]
20 GERALD ARMSTRONG, et al.,)
DATE: November 17, 1995
21) TIME: 9:00 a.m.
DEPT: 1
22 Defendants.) TRIAL DATE: Vacated

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1 I.

2 INTRODUCTION

3 At the commencement of these proceedings, plaintiff Church
4 of Scientology International ("the Church" or "plaintiff") sought
5 and obtained a preliminary injunction against defendant Gerald
6 Armstrong. Pursuant to Code of Civil Procedure Section 529(a),
7 and the Court's Order, the Church was required to post an
8 undertaking of \$70,000 in order for the injunction to become
9 effective. The Church deposited \$70,000 in lieu of a bond. Now,
10 more than 3 years later, this Court has entered a permanent
11 injunction against Armstrong, which is not conditioned on the
12 posting of a bond by the Church, and, in addition, has summarily
13 adjudicated six breach of contract claims in the Church's favor,
14 resulting in a debt owed by Armstrong to the Church of \$300,000.
15 On April 19, 1995. Armstrong filed a petition for bankruptcy,
16 claiming to be insolvent. There is no cross-claim surviving in
17 this action under which Armstrong could obtain any monetary
18 recovery. Under these circumstances, the Church requests
19 immediate return of its \$70,000, together with all of the
20 interest which has accrued in the years in which it has been on
21 deposit with the Court.

22 II.

23 THE CHURCH IS ENTITLED TO IMMEDIATE RETURN OF THE DEPOSIT

24 Code of Civil Procedure Section 995.360 provides that a bond
25 (or, as in this case, a monetary deposit made in lieu of a bond)
26 may be removed from the Court file and returned either if the
27 beneficiary of the bond so stipulates, or if the bond is no
28 longer in effect, "and the time during which liability on the

1 bond may be enforced has expired."

2 Here, the Church asked Armstrong to stipulate to return of
3 the deposit. [Ex. A to Declaration of Laurie J. Bartilson]
4 Although Armstrong's lawyer told Ms. Bartilson that he would
5 respond to that request, he has never done so. [Bartilson Dec.,
6 ¶ 4.] However, the time "during which liability on the bond may
7 be enforced" has indeed expired -- in fact, as demonstrated
8 below, **there has never been, and will never be, a time during**
9 **which any liability on the bond existed.**

10 The Church filed this action against Armstrong in February,
11 1992. After much delay by defendant Armstrong, in May, 1992, the
12 Los Angeles Superior Court entered an order of preliminary
13 injunction. [Ex. B to Bartilson Dec.] Paragraph 7 of the
14 preliminary injunction order provided that,

15 The restraints referred to in sec. 6, above, will
16 become effective upon plaintiff's posting an undertaking in
17 the sum of \$70,000 pursuant to C.C.P. 529(a) by 12:00 noon
18 on June 5, 1992.

19 On the morning of June 5, 1992, the Church made a deposit
20 with the Los Angeles Superior Court of \$70,000, [Ex. C to
21 Declaration of Laurie Bartilson, Receipt], in lieu of posting a
22 bond or undertaking, as permitted by Code of Civil Procedure
23 Section 995.710(a)(1).

24 Armstrong challenged the entry of the preliminary injunction
25 with an appeal to the Second District Court of Appeal. The
26 injunction was upheld by that Court on May 16, 1994. [Bartilson
27 Dec., ¶ 5.]

28 On October 25, 1994, the Los Angeles Action was transferred
to Marin County. The \$70,000 deposit was also transferred to

1 Marin County on January 19, 1995. [Ex. D to Declaration of
2 Laurie Bartilson]¹

3 On October 17, 1995, this Court entered an Order of
4 Permanent Injunction which expanded the preliminary injunction
5 that had previously been entered. [Id., Ex. E.]

6 On January 27, 1995, this Court summarily adjudicated the
7 fourth and sixth causes of action in the Church's favor, finding
8 that Armstrong was liable to the Church in the amount of \$100,000
9 as a matter of law. [Id., Ex. F.]

10 On October 17, 1995, this Court summarily adjudicated the
11 thirteenth, sixteenth, seventeenth and nineteenth causes of
12 action in the Church's favor, finding that Armstrong was liable
13 to the Church in the amount of \$200,000 as a matter of law. [Id.,
14 Ex. G.]²

15 Armstrong filed two cross-complaints in these consolidated
16 actions. In the Los Angeles case, the Church obtained summary
17 adjudication of the 2nd and 3rd causes of action of the cross-
18 complaint on August 16, 1994. [Id., Ex. H.] The only remaining
19 cross-claim in that action is a claim for declaratory relief,
20 which requests that the Court adjudicate the rights and
21 obligations of the parties pursuant to the contract. That claim,
22 which seeks no monetary damages, has been mooted by the Court's

23 ¹ For unknown reasons, the interest earned on the \$70,000 was
24 not also transferred to the Marin Superior Court. The Los
25 Angeles clerk's office acknowledged that the interest should also
26 have been calculated and transferred, but this has not yet been
27 done. [Bartilson Dec., ¶ 6.]

28 ² The facts and law which support most of the causes of action
remaining in Second Amended Complaint have, as result of the
litigation so far, already been summarily adjudicated in the
Church's favor.

1 adjudications enforcing the contract. In the Marin action, the
2 Church obtained summary adjudication of the Second Amended Cross-
3 Complaint on September 9, 1994. [Id., Ex. I.]

4 On April 19, 1995, defendant Armstrong filed a petition for
5 bankruptcy, in which he claimed to be insolvent. [Id., Ex. J.]

6 When an undertaking is ordered, as here, pursuant to Code of
7 Civil Procedure Section 529(a), it is ordered for a single,
8 specific purpose: to compensate the party enjoined for "any
9 damages. . . the party may sustain by reason of the injunction,
10 if the court finally decides that the applicant was not entitled
11 to the injunction." Here, this Court has now made a final
12 determination that the applicant -- the Church -- was entitled to
13 a preliminary, now permanent injunction. Hence, no liability for
14 payment to Armstrong has ever attached to the undertaking at all.
15 With a final determination, none can.

16 Nor, indeed, is there any possibility that Armstrong will
17 ever be in a position to obtain any monetary recovery from the
18 Church in this action. He has already been assessed judgment of
19 \$300,000; 12 causes of action are still pending, concerning which
20 this Court has already made factual findings which support the
21 Church's claims; and Armstrong has no cross-complaint which makes
22 any monetary demand, or on which he could prevail.

23 Under these circumstances, there is no possible liability
24 which the Church could incur as the result of having obtained
25 the injunction, and this Court should order that the deposit,
26 plus interest, be returned to the Church forthwith.

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CONCLUSION

The Church posted a deposit of \$70,000 when it obtained a preliminary injunction in 1992. There is now a final determination of permanent injunction against Armstrong, negating any possibility that Armstrong could make a claim against the deposit. Accordingly, the Church requests that the Court direct the Clerk of the Marin County Superior Court and the Clerk of the Los Angeles Superior Court to immediately return the Church's deposit of \$70,000 and interest thereon.

Dated: October 18, 1995

Respectfully submitted,

BOWLES & MOXON

BY: 
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN, & CAMPILONGO

Attorneys for Cross-Defendant
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On October 18, 1995 I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RETURN OF MONEY DEPOSITED WITH THE COURT on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed as follows:

Ford Greene
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 9493

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on October 18, 1995 at Los Angeles, California.

[] **(BY PERSONAL SERVICE) I delivered such -- envelopes by hand to the offices of the addressees.

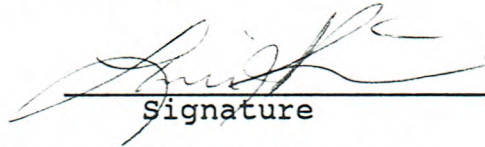
Executed on October 18, 1995, at San Rafael, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie Bartilson

Print or Type Name


Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)